IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.714 OF 2005

Anil Kumar Pramanik ... Petitioner

V/s

State of Maharashtra & Anr. .... Respondents

Shri Vijay Kantharia with S.D. Bhosale for petitioner

Mrs.Trupti Puranik for BMC

Shri S.R. Shinde,APP for the State

Coram : V.M.Kanade,J.

Dated : 08/04/2005.

P.C. :-

1 I have heard the learned counsel for the petitioner, respondent No.2 and APP for the State.

2 The applicant is challenging the order passed by the Magistrate,41st Court, Shinde Wadi, Dadar,Mumbai in criminal case No.7267/ML/2000 filed by the respondent No.2 in which process has been issued.

3 The complaint was filed by the respondent No.2 against the present petitioner in which it is alleged that the petitioner is carrying on the trade connected with refining precious metal and gold without obtaining the

licence from the Municipal Corporation of Greater Bombay.It is alleged that said offence is punishable under section (1)(e)(i)read with section 471 of the Mumbai Municipal Corporation (Amendment)Act,1962. It is further submitted thatas per Schedule "M" of the said Act, no licence is required for carrying out the trade of making gold or silver ornaments. It is further submitted that in any case no licence is issued for making gold or silver ornaments.

4 It is not possible to accept the submission made by the learned counsel for the petitioner. The question whether the petitioner was in fact preparing the ornaments out of the gold which was already refined can only be decided by the trial court. The petitioner has annexed the inspection report to the petition. The petitioner is granted liberty to lead evidence in the trial court and establish that he is not refining the gold as alleged but is only making the ornaments out of gold which is already refined. This issue, therefore, cannot be decided by this court by exercising its jurisdiction under section 482 of the Code. All the questions raised in this petition are kept open and the trial court shall decide the same after the parties lead evidence on merit and in accordance with law. Accordingly, criminal application is dismissed.

(V.M.Kanade,J.)